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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,580	12/05/2005	Alfred Von Schuckmann	244.1011	5830
20311	7590	09/04/2008	EXAMINER	
LUCAS & MERCANTI, LLP 475 PARK AVENUE SOUTH 15TH FLOOR NEW YORK, NY 10016			TYLER, STEPHANIE E	
ART UNIT	PAPER NUMBER			
3754				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/523,580	<b>Applicant(s)</b> VON SCHUCKMANN, ALFRED
	<b>Examiner</b> STEPHANIE E. TYLER	<b>Art Unit</b> 3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 05 December 2005.  
 2a) This action is FINAL.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 10-18 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 10-18 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 27 January 2005 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1668)  
     Paper No(s)/Mail Date 12/28/2005

4) Interview Summary (PTO-413)  
     Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

**DETAILED ACTION*****Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: reference element "49" of figure 8 is not supported or described in the specification. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Specification***

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure

sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

In particular, the claim language term "said" has been used in the abstract. Proper correction of this is required.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 10,12,14-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Gueret (6,070,763).

The Gueret reference discloses a dispenser (1) for pasty to flowable substances (P), the dispenser consists of a dimensionally stable container (8) having a mouthpiece (40,38), a bag (2) located within the container, and a mouthpiece pump (26,22,36,34); wherein a filling volume of the dispenser is held by the container (8), at least half of which includes the bag (2) which, when emptied from the mouthpiece, collapses into one container half (see fig.1, upper portion of element 8); and wherein the bag (2) collapses on account of a negative emptying pressure produced by the mouthpiece pump (26,22,36,34,40).

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Re Claim 12, wherein a grid (4,6) is disposed in front of a passage region (see fig. 1, passage leading to element 20; and along the central axis 11) between container shell half (see fig.1, upper portion of element 8) and emptying mouthpiece pump (26,22,36,34,40), to support the collapsed bag (2).

Re Claim 14, wherein the bag (2) has a slightly stabilized base area (3).

Re Claim 15, wherein an inlet opening, adjoining the passage region (see fig. 1, passage leading to element 20; and along the central axis 11), of the emptying mouthpiece pump (26, 22, 36, 34, 40) is formed as a web-interrupted annular opening (10A, 11) running concentrically and coaxially in relation to the bag (2).

Re Claim 16, wherein the annular opening (10A, 11) is formed by a ring of holes (see fig.2,11).

Re Claim 17, wherein the annular opening (10A,11) is disposed in the base of a collecting funnel (10) diverging counter to the direction of delivery of the substances (P), the base of the funnel also providing a pump chamber base (surface of 10A).

Re Claim 18, wherein the diameter of the annular opening (10A, 11) substantially corresponds to the diameter of the passage region (see fig. 1, passage leading to element 20; and along the central axis 11).

5. Claims 10 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Bau (2,471,852).

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The Bau reference discloses a dispenser (1) for pasty to flowable substances (P), the dispenser consists of a dimensionally stable container (2,3,6,7,29) having a mouthpiece (89), a bag (25) located within the container, and a mouthpiece pump (5,39,48,50,51,34); wherein a filling volume of the dispenser is held by the container (2,3,6,7,29), at least half of which includes the bag (25) which, when emptied from the mouthpiece, collapses into one container half (2,6,7); and wherein the bag (25) collapses on account of a negative emptying pressure produced by the mouthpiece pump (5,39,48,50,51,34).

Re Claim 11, wherein an outwardly protruding edge (27,fig.2; portion sandwiched between 29 and 26) of the bag (25) in the region of an equatorial connecting joint (29) of two container shell halves (2,3,6,7,29) is held in a flange-like manner, one half (2,6,7) carry the emptying mouthpiece pump (5,39,48,50,51,34) an in apex region.

#### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret.

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The dispenser having a mouthpiece pump that includes supporting ribs on its inner surface is a design choice based upon the needs of the manufacturer and/or consumer that will be operating the dispenser. Having supporting ribs on the inner surface of the mouthpiece pump does not affect the utility of the dispenser; and thus fails to be patentably define over the prior art.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Gueret (5,100,027; 6,073,805), Yu (6,648,244), Corsette (3,288,334), Gaucher (5,630,531), Di Mascio (EP0521278) are other various types of dispensers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEPHANIE E. TYLER whose telephone number is (571)272-8059. The examiner can normally be reached on 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. E. T./  
Examiner, Art Unit 3754

/Kevin P. Shaver/  
Supervisory Patent Examiner, Art Unit 3754